

TENTATIVE RULINGS for CIVIL LAW and MOTION

October 23, 2007

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the prevailing party must submit an order to the Court in accordance with Rule 3.1312 of the California Rules of Court. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

TENTATIVE RULING

Case:	West Coast Relocatables v. Allen L. Bender, Inc. Case No. CV CV 02-1427 Harold E. Nutter & Son, Inc. v. Allen L. Bender, Inc. Case No. CV CV 03-1081 Allen L. Bender, Inc. v. Washington Unified School District Case No. CV CV 04-2002
Hearing Date:	October 23, 2007 Department Two 9:00 a.m.

The evidentiary objections to paragraph 5 and the first sentence of paragraph 6 of the Declaration of George Gore are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Allen L. Bender, Inc. and National Fire Insurance Company of Hartford's motion for attorney's fees against Harold E. Nutter & Sons, Inc. is **DENIED** as to *Allen L. Bender, Inc. v. Washington Unified School District*, Case No. CV CV 04-2002 and the breach of contract cause of action and common count in *Harold E. Nutter & Son, Inc. v. Allen L. Bender, Inc.*, Case No. CV CV 03-1081.

Allen L. Bender, Inc. and National Fire Insurance Company of Hartford's motion for attorney's fees against Harold E. Nutter & Sons, Inc. is **GRANTED** as to the cause of action for foreclosure upon public works payment bond in *Harold E. Nutter & Son, Inc. v. Allen L. Bender, Inc.*, Case No. CV CV 03-1081.

Allen L. Bender, Inc. and National Fire Insurance Company of Hartford are directed to file supplemental papers addressing how much of their attorney's fees is related to the payment bond cause of action by no later than Tuesday, October 30, 2007. Harold E. Nutter & Son, Inc. shall file supplemental papers responding to the defendant's supplemental papers by no later than Tuesday, November 6, 2007. The supplemental briefs shall not exceed ten pages and shall address only the issue described herein.

TENTATIVE RULING

Case: **Digiaino v. Marino**
Case. No. CV CV 05-1749
Hearing: **October 23, 2007** **Department Two** **9:00 a.m.**

The plaintiff's Motion to Enforce Settlement Agreement Under CCP §664.6 is **GRANTED**. Interest commences to accrue on the money judgment on the date of entry of the judgment. (Code Civ. Proc. §685.020) The plaintiff's request for attorney's fees and costs is **DENIED**.

TENTATIVE RULING

Case: **SFC Greystone Investors, LP v. Davis Villas Assocs. et al.**
Case No. CV CV 02-1487
Hearing Date: **October 23, 2007** **Department Two** **9:00 a.m.**

Defendants Davis Villas Associates, Joint Venture's, PG&E Properties, Inc.'s, Gilia Enterprises', Anthony Smernes, Jr.'s, Judy Smernes', Andrew Efstratis', and Leslie Efstratis' request for judicial notice is **DENIED**.

Plaintiff SFC Greystone's evidentiary objections are **SUSTAINED**.

Plaintiff's request for judicial notice is **GRANTED**.

Defendants' motion for summary adjudication/judgment of plaintiff's second amended complaint is **DENIED**. Defendants fail to provide competent evidence of when plaintiff received the documents attached to the declaration of Lindy Scoffield, and plaintiff disputes that these documents were received as a part of the sales transaction. (DMF 8 & 9-11.) Therefore, defendants fail to demonstrate the expiration of the statutes of limitation. Defendants' motion also fails to dispose of the entirety of the fourth cause of action for fraud and the fifth cause of action for negligent misrepresentation. (Code Civ. Proc., § 437c, subd. (f)(1).) Even if defendants could establish when plaintiff received these documents, plaintiff alleges defects in its second amended complaint that these documents do not disclose. Defendants' request for summary adjudication of the first and third causes of action in plaintiff's complaint is **DENIED**.

TENTATIVE RULING

Case: **People v. Kirtlan**
Case. No. CV CV 075-2279
Hearing: **October 23, 2007** **Department Two** **9:00 a.m.**

The parties are ordered to appear. No request for a hearing is required.